



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

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February 28, 1955

Hon. Rogers Kelley, Chairman
Committee on Water Rights
Irrigation & Drainage
54th Legislature
Austin, Texas

Letter Opinion No. MS-178

Re: Constitutionality of
S. B. 139 re creation
of water control and
improvement district.

Dear Senator Kelley:

Your letter requests an opinion as to the "proper form, constitutionality, etc." of Senate Bill 139, and then continues:

"Your opinion would also be appreciated as to whether or not this bill should be classified as a local or a general bill."

It is presumed that your first question is because of Article 3, Section 56, of the Constitution of the State of Texas prohibiting the passage of a local or special law where a general law can be made applicable, and also prohibiting the exemption of property from taxation by local or special law.

The cases, Lower Colorado River Authority v. McCraw, 125 Tex. 268, 83 S.W. 2d 629 (1935), and Lower Neches Valley Authority v. Mann, 140 Tex. 294, 167 S.W. 2d 1011 (1943) involved basin wide districts which had been challenged as violating this provision of the Constitution, and the Supreme Court held that a statute is not local and special even though confined in enforcement to a limited area "if persons or things throughout the State are affected thereby, or if it operates upon a subject that the people at large are interested in." Stephenson v. Wood, 119 Tex. 564, 34 S.W. 2d 246." (83 S.W. 2d at page 636).

Section 1 of S. B. 139 provides that the conservation and reclamation district is organized by virtue of Article 16, Section 59, of the Constitution of Texas. That provision reads, in part, as follows:

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"There may be created within the State of Texas, or the State may be divided into such number of conservation and reclamation districts as may be determined to be essential to the accomplishment of the purposes of this amendment to the Constitution . . ."

This provision in Article 16, Section 59, even if considered a local law, is an exception to Article 3, Section 56, in the same manner as the provisions of Article 8, Section 9, are considered as a partial exception to Article 3, Section 56. Austin Brothers v. Patton, 288 S.W. 182, 187-8 (Tex. Comm. App. 1926). The same "exception" rule was applied to the provisions of Article 7, Section 3, of the Constitution of Texas as adopted in 1883. Hill v. Smithville Independent School District, 251 S.W. 209 (Tex. Comm. App., 1923) opinion adopted; Jenkins v. Autry, 256 S.W. 672 (Tex. Civ. App., 1923) writ ref. The Amendment of 1927 to Article 7, Section 3, of the Constitution removed that exception. Fritter v. West, 65 S.W. 2d 414 (Tex. Civ. App., 1933) writ ref.

Thus, under either view, the rule laid down in City of Ft. Worth v. Bobbitt, 121 Tex. 14, 36 S.W. 2d 470 (1931) is not operative as to a conservation district created pursuant to Art. 16, Sec. 59 of the Constitution, and S. B. 139 is not unconstitutional as a local and special law.

The provisions of Section 19 of S. B. 139 provide for the exemption of properties of the district from taxation, and such provisions are constitutional since the district is a governmental agency and therefore not within the meaning of this particular prohibition. The Lower Colorado and Lower Neches cases, both supra, are squarely on the point.

In addition to the one direct question as to the constitutionality, your request for an opinion asked for consideration of the formal portions of the bill. The suggestions and comments are made with the realization that the Constitutional provisions hereafter referred to may not be applicable in a particular fact situation that may arise, but it is felt that, in the light of your request, the following items should be called to your attention:

(1) Section 5 provides for the assumption of debt election to be held only in the area sought to be annexed to the Authority. I would call your attention to the language of Article 7, Section 3, as contrasted with the language of Article 16, Section 59. As to the school tax, the Constitution says: "provided that a majority of the qualified property taxpaying voters of the district at an election to be held for that purpose, shall vote such tax" The conservation amendment reads, in part: ". . . the Legislature shall not authorize the issuance of any bonds or provide for any indebtedness against any reclamation district unless such proposition shall first be submitted to the qualified property taxpaying voters of such district" There are no adjudicated cases on the conservation amendment, but as to the schools, the courts have held that the change of boundaries of a school district creates, in effect, a new district. Love v. Rockwall Independent School District, 194 S.W. 659 (Tex. Civ. App., 1917) writ ref.; Hill v. Smithville Independent School District, supra.

(2) It is suggested that the qualification of the voters as contained in Section 5(g) be changed, for the sake of clarity, to the identical language of the Constitution.

(3) Section 7 authorizes condemnation above the probable high water mark; Section 21(a) authorizes regulation of recreational and business privileges; and Section 22 authorizes the establishment of public parks and recreational facilities. In this connection, I would call your attention to the case of Brazos River Conservation and Reclamation District v. Harmon, 178 S.W. 2d 281 (Tex. Civ. App., 1944) writ ref. w.o.m., where condemnation of excess lands was held to be an abuse of discretion where that land was above the high water mark and was to be used for park purposes. I would also call your attention to the case styled Deason v. Orange County Water Control and Improvement District, 151 Tex. 29, 244 S.W. 2d 981 (1952) wherein the court said: "Section 59(a), Article 16 . . . contains no language which would support a holding that the people in enacting the amendment contemplated that a water control and improvement district created for the purpose of conserving and developing the natural resources of the district would have the power to provide fire-fighting equipment and appliances for a town within said district The Legislature can only grant the district such powers and rights as come within the contemplation or provisions of the Articles of the Constitution herein discussed."

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(4) Section 21(a) provides that the Authority may contract for the construction and operation of toll bridges or for ferry service on or over the waters of the Authority, and provides for the Authority to set the tolls, and requires that bond shall be made payable to the Authority. The language appears to permit more than an easement, and your attention is called to Article 3, Section 52(b) of the Constitution of Texas, and the Deason case, supra.

(5) Other provisions of the Act which are at variance with the general law are the provisions of Section 5(b) pertaining to permissive interest rate Section 10, wherein the Comptroller is required to register bonds without the concurrent surrender and cancellation of the original bonds. It should be noted that the contract with the bank in this instance is a unilateral one and is not a firm banking commitment which this office would approve. Section 18 removes all discretion now placed in state officials as to whether the bonds should be eligible as collateral for state funds.

Very truly yours,

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By

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